

**IOWA DEPARTMENT OF NATURAL RESOURCES
AMENDMENT TO ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: City OF Wyoming Jones County, Iowa NPDES Permit #5392001	ADMINISTRATIVE CONSENT ORDER NO. 2014-WW-08
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TO: City of Wyoming
Keith Somerville, Mayor
141 West Main Street
PO Box 76
Wyoming, IA 52362

I. SUMMARY

This administrative consent order (Order) is entered into between the City of Wyoming and the Iowa Department of Natural Resources (DNR) for the purpose of establishing a schedule through which the City of Wyoming can correct and prevent violations of NPDES Permit #5392001 and the Iowa statutes and regulations related to wastewater treatment and disposal.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Susan Miller, Environmental Specialist
DNR Field Office #1
909 West Main Street, Suite 4
Manchester, Iowa 52057
Phone: 563-927-2640

Relating to legal requirements:
Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515/281-8889

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 (wastewater) and the rules adopted or permits issued pursuant to that part, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. The City of Wyoming owns and operates a two-cell, controlled discharge wastewater treatment lagoon system pursuant to NPDES Permit #5392001. The lagoons are designed to treat an Average Wet Weather (AWW) influent flow of 0.095 MGD and a Maximum Wet Weather flow of 0.1430 MGD. The system is required to be operated in a controlled discharge mode with no more than twice yearly discharges approximately 180 days apart. NPDES Permit #5392001 was last renewed on October 13, 2006. Timely application for renewal was received by the DNR on February 14, 2011. By operation of law, the permit is extended until such time as a final decision is made on the application for renewal.

2. The City of Wyoming has consistently experienced flows in excess of the capacity of the wastewater collection and treatment system since at least the 1990's.

3. In 2001, the City of Wyoming received a construction permit for televising, assessment, and lining or replacement of approximately 6,000 linear feet of sanitary sewer. This project was intended to reduce inflow and infiltration (I/I) in the system to reduce flows to the wastewater plant.

4. On July 10, 2002, the City of Wyoming was issued a construction permit for improvements to a sanitary sewer lift station and force main and upgrades to the lagoon outfall.

5. On January 7, 2003, the DNR conducted an inspection of the City of Wyoming's wastewater collection and treatment system. At that time it was determined that flows continued to exceed the capacity of the system, resulting in discharges in violation of the permit.

6. On May 23, 2005, a permit renewal application was sent to the City of Wyoming. The accompanying cover letter raised the issue that the facility appeared to be hydraulically overloaded and that this issue must be addressed.

7. On October 13, 2006, the DNR issued renewed NPDES Permit #5392001.

8. On February 26, 2008, the DNR issued a Notice of Violation to the City of Wyoming. The notice was based upon the continued hydraulic overloading of the wastewater facility.

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Due to the excess influent, the City of Wyoming failed to hold wastewater for the required minimum of 180 days, discharged more often than allowed, and violated effluent limitations. The notice directed the City of Wyoming to submit a Plan of Action within 120 days detailing how the City will take steps to return to compliance.

9. On June 26, 2008, the City of Wyoming notified the DNR that an engineering firm had been hired to prepare a facilities planning study to identify necessary improvements to the wastewater collection and treatment system.

10. On September 25, 2008, the DNR received a report entitled "City of Wyoming Pumping, Treatment and Collection Facilities 2008" prepared by IIW Engineers and Surveyors, P.C. A review of historic influent flows to the treatment facility revealed that actual flows were more than 3 times the design flow of the facility. The report recommended the conversion of the existing controlled discharged lagoons to an aerated continuous discharge lagoon. The cover letter submitted with the report indicated that collection system improvements were planned.

11. On November 12, 2008, the City of Wyoming submitted to the DNR a schedule for the submittal of a facility plan and the completion of necessary improvements. The plan called for completion of construction and full compliance by September of 2010.

12. On April 23, 2009, the City of Wyoming participated in a telephone conference with the DNR to discuss the problems with the NPDES permit and the City's application for the Community Development Block Grant, a SRF Planning and Design Loan.

13. On July 16, 2009, the City of Wyoming notified the DNR of the intent to discharge partially treated wastewater from the lagoons because they were full. This discharge was in violation of the NPDES permit. The prior discharge had occurred in June. The City is required to hold wastewater for 180 days prior to discharge.

14. On September 14, 2009, the City of Wyoming submitted a revised compliance schedule which delayed final compliance until November of 2011.

15. On August 18, 2009, the City of Wyoming submitted a facility plan to the DNR. This is the first step in obtaining a construction schedule for necessary facility improvements.

16. On November 8, 2010, the City of Wyoming submitted a revised compliance schedule which delayed final compliance until June of 2013.

17. On April 27, 2011, the City of Wyoming submitted an Antidegradation Alternatives Analysis to the DNR. This submittal was 4 months after the date included in the most recently revised schedule.

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18. On October 10, 2011, the DNR provided comment letters on the Facility Plan and the Antidegradation Alternatives Analysis. The City of Wyoming responded to these letters on November 7, 2011 and December 12, 2011.

19. On December 23, 2011, the City of Wyoming received a comment letter from the DNR requesting proof of public notice and comment in regard to the Antidegradation Alternatives Analysis.

20. From February 7, 2012 to February 17, 2012, the City of Wyoming discharged from the wastewater lagoons in violation of the NPDES permit for this facility.

21. On May 4, 2012, the DNR approved the Antidegradation Alternatives Analysis submitted by the City of Wyoming. The chosen alternative was converting the controlled discharge lagoons into a two cell aerated continuous discharge lagoon system.

22. On July 16, 2012, the DNR provided further comment to the City of Wyoming in regard to the proposed Facility Plan.

23. On May 2, 2013, the DNR inspected the City of Wyoming's wastewater collection and treatment system. A review of the City's records revealed that the City had discharged wastewater four times in 2011 and four times in 2012 and also in March of 2013. This facility is only authorized to discharge after a 180 day holding period, resulting in no more than two discharges per year. Due to the more frequent discharges, wastewater is being discharged without the required minimum level of treatment.

24. On June 27, 2013, the City of Wyoming responded to the DNR's July, 2012 comment letter with a Design Brief to provide updated information.

25. On August 16, 2013, the City of Wyoming submitted a plan of action schedule for the completion of necessary improvements.

26. On September 16, 2013, the DNR provided the City of Wyoming with a comment letter. Because the City of Wyoming has modified the proposed average dry-weather flow, averaged wet-weather flow, and design loading rates, the project must be re-evaluated. A new wasteload allocation must be calculated. A new antidegradation analysis must be prepared, submitted, and reviewed. Additional issues which must be addressed include a justification for the ammonia removal performance assumptions and an identification of groundwater separation mechanisms.

27. In September of 2013, the City of Wyoming and its consulting engineers decided to propose a different treatment system than had been previously proposed.

28. On October 23, 2013, the DNR approved the revised design flows for the design of the City of Wyoming's wastewater treatment upgrades.

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29. On January 3, 2014, the DNR received a request to evaluate a proposed alternative design for a wastewater treatment system for the City of Wyoming.

30. The DNR rejected the proposed alternative design on April 18, 2014.

31. The City of Wyoming has identified alternate technology and proposed a reasonable schedule for the completion of construction.

IV. CONCLUSIONS OF LAW

The DNR and the City of Wyoming agree that the following conclusions of law are applicable in this case:

1. Pursuant to Iowa Code section 455B.186(1), a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the director.

2.. 567 IAC 64.7(5)(f) states that each issued NPDES permit shall provide for and ensure that the permittee at all times maintains in good working order and operates as efficiently as possible any facilities or systems of control to achieve compliance with the terms and conditions of the permit. The above-mentioned facts indicate noncompliance with this provision.

3. Pursuant to the terms of NPDES Permit #5392001, the City of Wyoming's wastewater treatment plant must be operated using a storage/drawdown mode of operating. Wastewater must be stored for approximately 180 days after which time the water level is to be lowered to make room for the next storage period. Lagoon drawdown at a rate greater than 10 times the 180 day AWW design flow is prohibited. Lagoon drawdown should occur in the spring and fall and at times when flow in the receiving stream is not at its minimum. The City of Wyoming has violated this provision on multiple occasions.

V. ORDER

THEREFORE, the DNR orders and the City of Wyoming agrees to the following schedule of compliance:

1. By June 30, 2014, the City of Wyoming shall submit to the DNR an update to the City's facility plan to describe the intended technological alternative chosen for the necessary improvements to the wastewater collection and treatment facility in order to achieve compliance with Iowa law.

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2. By August 30, 2014, the City of Wyoming shall submit to the DNR initial plans and specifications for necessary improvements to the wastewater collection and treatment facility in order to achieve compliance with Iowa law.

3. By October 31, 2014, the City of Wyoming shall submit to the DNR final plans and specification and an application for a construction permit for necessary improvements to the wastewater collection and treatment facility in order to achieve compliance with Iowa law.

4. Within 150 days of DNR issuance of a construction permit, the City of Wyoming shall begin construction of necessary improvements to the wastewater collection and treatment facility in order to achieve compliance with Iowa law.

5. By December 1, 2015, the City of Wyoming shall complete construction of necessary improvements to the wastewater collection and treatment facility in order to achieve compliance with Iowa law. However, the City of Wyoming shall not be required to complete construction in less than one year from the date of issuance of a construction permit by the DNR. It is understood that prior to the issuance of the construction permit, the December 1, 2015 date may be used in a compliance schedule or NPDES permit but that the DNR shall modify such schedule if needed to provide the agreed upon one year for completion.

6. Within 30 days of the execution of this Order, the City of Wyoming shall pay an administrative penalty in the amount of \$2,000.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at IAC Chapter 567 - 10. The administrative penalty assessed by this Order is determined as follows:

Economic Benefit – The City of Wyoming has achieved an economic benefit by failing to design and construct the necessary wastewater facility improvements. The 2008 engineering estimate concluded that the planned upgrades would cost approximately \$1.7 million dollars. Construction costs have fluctuated since 2008 but are anticipated to be higher at the time of construction than the previously proposed costs. In order to ensure that any economic benefit is nullified, \$500 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this

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time, as the most equitable and efficient means of resolving the matter. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. In this case, the City of Wyoming has had flows in excess of the facility's capacity for over ten years, resulting in multiple violations per year of the permit. A controlled discharge lagoon is designed to provide treatment through detention. The failure to hold wastewater for the minimum of 180 days results in the discharge of untreated wastewater to waters of the state. In light of the multiple effluent violations and the length of time during which violations occurred, \$1,500 is assessed for this factor.

Culpability – The City of Wyoming has been aware of the need to upgrade its facility since at least 2003. The City has repeatedly proposed to undertake the necessary improvements but failed to do so. However, the DNR recognizes that funding considerations have played a major role in these delays. For these reasons, no penalty is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly by and with the consent of the City of Wyoming. For that reason, the City of Wyoming waives the right to appeal this Order or any part thereof.


VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with section "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this Order.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 26th day of
June, 2014



KEITH SOMERVILLE, MAYOR
City of Wyoming

Dated this 16th day of
June, 2014

NPDES #5392001; Field Office #1; Jon Tack; EPA; I.B.2(b); I.C.1